IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP NO.17937 of 2006

DATE OF DECISION: 21.11.2006

Kuljinder Kaur ....Petitioner

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Ramesh Sharma, Advocate
for the petitioner.

J.S. Khehar, J.

The petitioner possesses the qualifications of B.Sc. B.Ed., and as such, she claims to possess the academic qualifications prescribed for appointment to the post of Medical Science Master .

The respondents issued an advertisement dated 13.6.2006 inviting applications for the posts of Medical Science Masters. As per the criterion for evaluating the inter se merit, the petitioner claims to be entitled to an award of 142 marks.

On the culmination of the process of selection, the respondents prepared a merit list, wherein male and female candidates were evaluated separately. Whereas, for general category "male" candidates, the candidate who had been awarded more than 134.44 marks were declared to have been selected for the advertised posts, for general category "female" candidates the last selected candidate had 146.33

marks. It is also the contention of the learned counsel for the petitioner that similar discriminatory treatment was adopted in the case of Scheduled Caste candidates. While the "male" Scheduled Caste candidate with more than 123.79 marks had been selected for appointment to the post of Medical Science Master, the last "female" candidate from the said category had an award of 133.70 marks.

It is the vehement contention of the learned counsel for the petitioner, that there cannot be any discrimination on the basis of sex. In this behalf, it is pointed out, that the selection and appointment of a candidate with lower marks than the petitioner from the "male" category, clearly violates the rights of the petitioner under Articles 14 and 16 of the Constitution of India. It is, therefore, the contention of the learned counsel for the petitioner, that the respondents ought to have prepared the merit list jointly, irrespective of the sex of the candidate involved. Had the aforesaid procedure been adopted by the respondents, the petitioner wold have definitely been selected and appointed as a Medical Science Mistress.

It needs to be noticed that the posts, for which the petitioner is an applicant, are governed by the Punjab State Education Class III (School Cadre Service) Rules, 1978 (hereinafter referred to as the `1978 Rules'). Rule3 of the aforesaid rule is relevant for the present controversy and is being extracted hereunder:-

> "3. Number and Character of Posts- The Service shall have two branches, namely, Men Branch and Women Branch and shall comprise the posts shown in Appendix `A' to these rules:

> Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or to create new posts with different designation and scales of pay whether permanently and temporarily."

The petitioner has not challenged the vires of rule 3 of the 1978 Rules, extracted hereinabove. The aforesaid rule envisages two branches constituting separate cadres; one comprising of "male" teachers and the other comprising of "female" teachers. The advertisement dated 13.6.2006 was issued by the respondents to fill up the posts expressly ear-marked separately for "men" and "women" candidates. Under the aforesaid statutory rule, it was imperative for the authorities to have prepared separate and independent merit lists for men and women candidates. This is exactly what has been done by the respondents. We find no infirmity in the action of the respondents in conducting a process of selection, so as to recruit candidates belonging to the separate cadres envisaged by the 1978 Rules, on the basis of different merit lists for each of the cadres. Even otherwise, we are satisfied, that the action of the respondents was permissible in terms of the decision rendered by the Supreme Court in Indra Sawhney V. Union of India and others, 1992 Supp (3) SCC 217, wherein the Apex Court in paragraph 514 observed as under:-

> "Women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept

in the quota of the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a special quota for women as such and whatever the percentage-limit on the reservations under Article 16, need not be exceeded."

For the reasons recorded hereinabove, we find no merit in this petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

November 21, 2006.
vig